

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2000-371-T - ORDER NO. 2001-1093

DECEMBER 3, 2001

IN RE: Application of All American Moving &)	
Storage, Inc., 5 Yacht Club Drive, Hilton)	ORDER GRANTING
Head Island, SC 29926 (Mailing Address:)	CLASS E CERTIFICATE
Post Office Box 22655, Hilton Head Island,)	
SC 29925) for a Class E Certificate of Public)	
Convenience and Necessity to Transport)	
Household Goods.)	

This matter comes before the Public Service Commission of South Carolina ("Commission") on the Application of All American Moving & Storage, Inc. of Hilton Head Island (hereafter referred to as "All American" or the "Applicant"). By its Application, All American requested a Class E Certificate of Public Convenience and Necessity to transport household goods as follows:

HOUSEHOLD GOODS, AS DEFINED IN R.103-210(1):
Between points and places in South Carolina.

The Commission's Executive Director instructed All American to publish a Notice of Filing in a newspaper of general circulation in the service area desired. The Notice of Filing provided details of the Application and of the requested authority and provided information for public participation in the proceedings concerning the Application. As required by the Commission's Executive Director, All American provided proof of publication of the Notice of Filing. Petitions to Intervene were filed by

Carey Moving & Storage, Inc; Carey Moving & Storage of Greenville, Inc.; Arrow Moving & Storage, Inc.; and Fountain Moving & Storage, Inc.

By Order No. 2001-208, dated March 7, 2001, the Commission granted a Motion by the Commission Staff to dismiss All American's Application. The Staff's Motion was based upon the failure of All American to comply with certain directives of the Commission relative to the instant docket. By letter dated April 26, 2001, counsel for All American requested that All American's Application be reinstated and further requested to amend the scope of authority as follows:

HOUSEHOLD GOODS, AS DEFINED IN R.103-210(1):
Between points and places in Beaufort, Colleton, and
Jasper Counties, South Carolina.

By Order No. 2001-455, dated May 17, 2001, the Commission granted All American's request for reinstatement of the Application and modified the requested scope of authority.

A hearing on All American's Application was held on October 11, 2001, at 2:30 P.M. in the hearing room at the offices of the Commission. The Honorable William T. Saunders, Chairman, presided at the hearing. Robert T. Bockman, Esquire, represented All American. Florence P. Belser, Deputy General Counsel, represented the Commission Staff. No Intervenors appeared at the hearing. Wayne Ross testified in support of All American's Application for authority.

APPLICABLE LAW

1. S.C. Code Ann. § 58-23-20 (Supp. 2000) provides in part:

No corporation or person, his lessees, trustees, or receivers may operate a motor vehicle for the transportation of persons or property for compensation on an improved public highway in this State except in accordance with the provisions of this chapter, except where the use of a motor vehicle is incidental only to the operation, and any such operation is subject to control, supervision, and regulation by the commission in the manner provided by this chapter.

2. S.C. Code Ann. § 58-23-40 (1976) provides:

No motor vehicle carrier shall hereafter operate for the transportation of persons or property for compensation on any improved public highway in this State without first having obtained from the Commission, under the provisions of Article 3 of this chapter, a certificate and paid the license fee required by Article 5.

3. S.C. Code Ann. § 58-23-590(A) (Supp. 2000) provides:

The commission shall promulgate regulations necessary to control entry and certification standards, set rates and charges, and establish enforcement procedures and powers to govern the operations of carriers of household goods and hazardous waste for disposal.

4. S.C. Code Ann. § 58-23-590(C) (Supp. 2000) provides:

The commission shall issue a common carrier certificate or contract carrier permit of public convenience and necessity if the applicant proves to the commission that:

- (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the commission's regulation; and
- (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.

The commission shall adopt regulations that provide criteria for establishing that the applicant is fit, willing, and able, and criteria for establishing that the applicant must meet the requirements of public convenience and necessity. The determination that the proposed service is required by the public convenience and necessity must be made by the commission on a case by case basis.

5. Following enactment of S.C. Code Ann. § 58-23-590, the Commission proposed amendments and changes to the Commission's regulations governing Motor Carriers. The amended regulations became effective in June 1998.

6. 26 S.C. Regs. 103-102(1) (Supp. 2000) defines "Certificate of PC&N" as the certificate of public convenience and necessity authorized to be issued under provisions of Chapter 23 of Title 58 of the Code of Laws of South Carolina, 1976. Certificates of PC&N shall be required of all for-hire passenger carriers, household goods carriers (except those operating exclusively within the limits of any municipality), and hazardous waste for disposal carriers. Holders of Certificates of PC&N shall be considered regulated carriers.

7. 26 S.C. Regs. 103-102(14) (Supp. 2000) defines "Common Carrier by Motor Vehicle" as "any person¹ which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property for compensation, whether over regular or irregular routes, except as exempted in Section 58-23-50 and Section 58-23-70 of Code of Laws of South Carolina, 1976."

8. A "Class E Motor Carrier" is defined in 26 S.C. Regs. 103-114 (Supp. 2000) as "a common carrier of property (household goods or hazardous waste for disposal) by motor vehicle including a motor vehicle containing goods packed by a packing service. A Class E motor carrier must obtain either a Certificate of PC&N or FWA from the Commission."

9. 26 S.C. Code Regs 103-133 (Supp. 2000) is entitled "Proof Required to Justify Approving an Application" and provides in subsection (1) as follows:

¹ 26 S.C. Code Regs. 103-102(15) defines "person" as "any individual, firm, partnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof."

(1) PC&N (Household Goods or Hazardous Waste for Disposal). An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of household goods or hazardous waste for disposal by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to be appropriately perform the proposed service and that public convenience and necessity are not already being served in the territory by existing authorized service. The public convenience and necessity criterion must be shown by the use of shipper witnesses. If the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application. The following criteria should be used by the Commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public:

- a. FIT. The applicant must demonstrate or the Commission determine that the applicant's safety rating is satisfactory. This can be obtained from U.S.D.O.T. and S.C.P.D.P.S safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety operations in South Carolina, and agree to operate in compliance with these statutes and regulations.
- b. ABLE. The applicant should demonstrate that he has either purchased or leased on a long-term basis necessary equipment to provide the service for which he is applying. Thirty days or more shall constitute a long-term basis. The applicant must undergo an inspection of all vehicles and facilities to be used to provide the proposed service. The applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission's insurance requirements and the costs associated therewith.
- c. WILLING. Having met the requirements as to "fit and able," the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

10. 26 S.C. Code Regs. 103-134 (Supp. 2000) is entitled “When Hearing May Be Held” and provides in relevant part that “[w]hen an application for a Certificate of PC&N is submitted and there is no opposition, the Commission may hold a hearing if it deems necessary for the purpose as it shall determine, including the issue of fitness, willingness, or ability of the applicant to appropriately perform the proposed service, or the issue of whether public convenience and necessity are already being served.”

11. By Order No. 1999-654, dated September 15, 1999 (Docket No. 1999-376-T), this Commission found compliance with the shipper witness provision to be problematic for small applicants seeking a very limited scope of authority. The Commission held that a waiver of the shipper witness requirement in 26 S.C. Code Regs. 103-133(1) was in order for applicants who propose to transport household goods for hire between points and places in three or fewer counties.² The Commission noted that Order No. 1999-654 did not relieve an applicant from establishing that the public convenience and necessity require the services sought in the application but merely allowed an applicant seeking authority in three or fewer counties to make its showing that public convenience and necessity require the proposed services by some means other than the use of shipper witnesses.

EVIDENCE OF RECORD

Wayne Ross testified in support of the Application. Mr. Ross is the president of All American, and his duties and responsibilities cover sales, all personnel matters, claims or any problems arising with customers, telemarketing, and any other issue or duty

² By Order No. 2000-24, dated January 5, 2000 (Docket No. 1999-376-T), the Commission clarified its holding in Order No. 1999-654 to apply only to those applications seeking authority to transport household goods in three or fewer contiguous counties.

that may arise in the business. Mr. Ross stated that he had experience in the moving industry having worked as senior vice president and president of Allstates Moving Company, another moving company in the Hilton Head Island area, for five years. Further, Mr. Ross indicated that he had significant business experience, including management experience. All American was started in May 2000, and the owner of All American is Delores Daggett Hill.

According to Mr. Ross, All American has a full climate controlled facility in Bluffton for warehousing customers' goods. All American has fourteen employees and has a moving truck and pack van, both of which are fully paid for. Further, All American has the necessary incidental equipment, such as padding and dollies, to perform the work for which All American requests authority.

According to Mr. Ross, All American has sufficient financial resources to begin offering local moving services in South Carolina. As to All American's financial wherewithal, Mr. Ross stated that All American has money in the bank and further that All American has a relationship with a bank such that All American could borrow funds should the need arise.

Mr. Ross testified that All American would use telemarketing to attract business and would also use "yellow page" advertisements and advertisements in "the shopper" circular. Mr. Ross estimated that per year advertising costs would be budgeted at twenty to twenty-five thousand dollars per year.

As for experience, Mr. Ross testified that All American has authority to perform interstate moving services and that All American has a relationship for interstate moves

with a Mayflower agent out of Grand Rapids, Michigan. Mr. Ross stated that All American anticipated continuing that relationship for interstate moves.

With regard of the need for moving services for which the Applicant seeks authority, Mr. Ross testified that he believes the Beaufort/Hilton Head area will support the services which All American proposes to offer. Mr. Ross indicated that one of his priorities in beginning this business venture was to provide a moving service where the customers would be treated fairly. Mr. Ross admitted that he had made some moves, primarily for friends or former customers, prior to receiving authority. However, Mr. Ross indicated that he wanted to have the appropriate authority to make the moves that he may be requested to make. According to Mr. Ross, he sees a need for the services he proposes to offer because he receives eight to ten calls per month for local moving services.

Mr. Ross testified that there are no outstanding judgments pending against the business. He further stated that he is aware of the Commission regulations concerning insurance coverage and that the business currently carries adequate insurance coverage. Further, Mr. Ross affirmed that he is familiar with the rules and regulations of the Public Service Commission of South Carolina and that he agreed to operate in compliance with the statutes and regulations governing for-hire motor carrier services.

FINDINGS OF FACT

After full consideration of the Application, the testimony presented, and the applicable law, the Commission makes the following findings of fact:

1. The Applicant, All American, desires to provide moving services of household goods between points and places in Beaufort, Colleton, and Jasper Counties, South Carolina. This finding of fact is supported by the testimony of Mr. Ross and the submission of the Application requesting a Class E Certificate of Public Convenience and Necessity.

2. The Applicant, All American, is fit, willing, and able to provide and properly perform the services which it seeks to provide. This finding of fact is based upon the testimony of Mr. Ross and the Application submitted requesting the authority. "Fitness" was demonstrated by Mr. Ross testifying (1) that All American is aware of the requirement for a safety rating, (2) that there are no outstanding judgments pending against All American, and (3) that All American will operate in compliance with all statutes and regulations pertaining to for-hire motor carrier operations. Further, the Application contains (1) a certification that All American is familiar with the regulations and statutes governing for-hire motor carrier services and (2) that there are no outstanding judgments pending against All American. "Able" was demonstrated by Mr. Ross testifying that All American currently operates in interstate moving with its present equipment of a truck and a pack van in the Hilton Head area and has fourteen employees who are trained and currently providing the moving services that All American seeks to offer in South Carolina. Mr. Ross also provided evidence establishing that he possesses the financial wherewithal necessary to conduct for-hire motor carrier operations in South Carolina. Further, Mr. Ross testified that he is aware of the Commission's insurance requirements and provided testimony that he will maintain the sufficient insurance for the

protection of the public. “Willingness” was demonstrated by the filing of the Application and the testimony of Mr. Ross indicating All American’s desire to undertake this business venture.

3. The services proposed by All American are required by the public convenience and necessity. This finding of fact is based upon the testimony of Mr. Ross. Mr. Ross provided testimony regarding the number of moves that All American has lost due to the lack of intrastate authority. Further, as a resident of the area that he proposes to serve and as the president of a moving business which has been providing interstate services and the former president of a competing moving company in the area, Mr. Ross opined that there is sufficient need in the area of Beaufort, Colleton, and Jasper Counties to support the services which All American proposes to offer.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and the applicable law, the Commission concludes as follows:

1. The Commission concludes that All American has demonstrated through its Application and the testimony presented that it meets the requirements of fit, willing, and able as set forth in 26 S.C. Code Reg. 103-133 (Supp.2000).

2. The Commission concludes that All American has sufficiently demonstrated through its presentation that the public convenience and necessity in the area in which All American proposes to serve requires the services proposed by the Application, as amended by the April 26, 2001, letter from All American’s counsel.

3. Based on the conclusions above, that All American has demonstrated that it meets the requirements of fit, willing, and able and that it has demonstrated that the public convenience and necessity require the services it proposes, the Commission concludes that a Class E Certificate of Public Convenience and Necessity should be granted to All American Moving & Storage, Inc. with the authority to provide for the movement of household goods between points and places in Beaufort, Colleton, and Jasper Counties, South Carolina. This grant of authority is contingent upon All American Moving & Storage, Inc. complying with all Commission regulations, and this grant of authority is not effective until such time as All American Moving & Storage, Inc. comes into compliance with the Commission regulations as outlined below.

IT IS THEREFORE ORDERED THAT:

1. The Applicant, All American Moving & Storage, Inc., should be granted a Class E Certificate of Public Convenience and Necessity authorizing All American Moving & Storage, Inc. to provide transportation services by motor vehicle as follows:

HOUSEHOLD GOODS, AS DEFINED IN R.103-210(1):
Between points and places in Beaufort, Colleton, and
Jasper Counties, South Carolina.

2. All American Moving & Storage, Inc. shall file the proper license fees and other information required by S.C. Code Ann. Section 58-23-10 et seq. (1976), as amended, and by R.103-100 through R.103-241 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 26 (1976), as amended, and R.38-400 through 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 23A (1976), as amended, within sixty (60) days of

the date of this Order, or within such additional time as may be authorized by the Commission.

3. Upon compliance with S.C. Code Ann. Section 58-23-10, et seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann., Vol. 26 (1976), as amended, a Certificate shall be issued to All American Moving & Storage, Inc. authorizing the motor carrier services granted herein.


4. Prior to compliance with the above referenced requirements and receipt of a Certificate, the motor carrier services authorized herein may not be provided.

5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)